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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/075,065	02/13/2002	William Eugene Moser	47440-044001	7475

7590 07/06/2006

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EXAMINER	
ABEL JALIL, NEVEEN	

ART UNIT	PAPER NUMBER
2165	

DATE MAILED: 07/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	**Application No.** 10/075,065	**Applicant(s)** MOSER ET AL.	
	Examiner Neveen Abel-Jalil	**Art Unit** 2165	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 14 April 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on *14 April 2006*. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: _____.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s).
13. ☐ Other: _____.

JEFFREY HAFFIN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100

Applicant's arguments filed 14-April-2006 have been fully considered but they are not persuasive.
In response to applicant's argument that Gibbs et al. does not suggest obvious modification as indicated by the Examiner.
Motivation to modify Gibbs to teach "providing plurality of dispositions and assigning one of plurality of dispositions to the rail equipment based on the overall damage condition of the rail equipment: is presented in the fact that Gibbs is directed to provides parts status notification and history of repair jobs hence a clear indication of past plurality of dispositions (i.e. minor or major or shop repairs) now whether they are based on historic data or current overall damage can be a user determined (i.e. recommendation) therefore reading on the claimed limitaion. Any user made selections or assignments given to different railcars and repair conditions (As taught in Gibbs, also stated in applicant's AF response 4/14/06) reads on the claimed limitaion of "providing plurality of dispositions and assigning one of the plurality of dispositions to the rail equipment".
There's no indication in the claimed limitaion that the assignment is dynamic or automatically or related to "overall cost calculation" presented in the specification. The claimed language is broad enough to be interpreted by Gibbs. There various recitations in the claims to suggest intended use and not direct firm recitations of the invention.

The novelty is not clear to the Examiner since Gibbs's combination does not appear to be different that the claimed limitation wherein specifically assigning status codes are related to dispositions of rail equipment monitored in Gibbs system.
It is not clear to the Examiner that the instant's application step of "providing plurality of dispositions" is distinct from Gibbs teachings of monitoring in real time overall locomotive status and various parts' conditions and providing reports to that end. The Independent claims are directed to inputting information RELATED to damage conditions (i.e. failure codes) not actually directed to inputting THE damage information itself. Thus, the reports generated with regards to overall damage condition based on the information inputted is simply "Gibbs transport status information and train damage information inputted by the user" . Information is simply just that "information" and is not given patentable weight. The distinctions made need to be directed to process or structural difference. There's no recitation to the data entry system being anything other than user operated.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the system determines the type of repair dispositions that should take place based on the overall damage condition) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See In re Van Geuns, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In response to applicant's arguments on pages 7 & 8 that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., repair disposition report assigning the determined type of repair disposition that should take place) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See In re Van Geuns, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). What is claimed in claim 1, line 10, is "generating report" related to damage conditions and NOT repairs.